IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/08/2002

CORAM

THE HONOURABLE MR.JUSTICE P.SHANMUGAM
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL NO.13 of 1995

1. Suresh (A1)
2. Vijayakumar (A2)
3. Prasad (A3) ... Appellants

-Vs-

STATE represented by the
Inspector of Police,
Minjoor Police Station,
Chengai MGR District
(Crime No.1119/92) ... Respondent

This Criminal Appeal is preferred under S.374 of The Code of Criminal Procedure against the judgment of the District and Sessions Judge, Chengai MGR District, made in S.C.No.5/94 dated 20.12.94.

!For Appellants : Mr.V.R.Balasubramanian

^For Respondent : Mr.S.Jayakumar,
Additional Public Prosecutor

:JUDGMENT

M.CHOCKALINGAM, J.
The appellants herein have preferred this appeal challenging the judgment of the District and Sessions Judge, Chengalpet, made in S.C.No.5 of 1994 finding them guilty of the offences under Ss 449, 380 and 3 02 read with 34 of Indian Penal Code and sentencing them to undergo R.I. for three years for the offence under S.380 of IPC, five years R.I. for the offence under S.449 of IPC and life imprisonment for the offence under S.302 read with 34 of IPC.
2. The appellants before this court will be hereinafter referred to as accused (A-1 to A-3) for the sake of convenience.
3. The accused stood charged for the offences under Ss 449, 302 read with 34 and 380 of Indian Penal Code, alleging that in the midnight of 13.7.1992, the accused made house trespass into Door No.42, Thirunarayanan Street, Vaikunda Perumal Nagar, Athipattu, in order to commit offence punishable with death, committed the murder of Venkatesan by using a towel and

have stolen away a gold ring weighing ½ sovereign, a wrist watch and Rs.800/- from the said house.

4. The case of the prosecution can briefly be stated as follows:

P.W.7, Uma Shankar was a contractor at Athipattu Village, under whom the deceased Venkatesan was working as Manager. P.W.7 hired a ' Bockline' machine which was operated at the site by the first accused, and he was assisted by the second accused. P.W.1 Karthikeyan, who worked as a Supervisor under P.W.7 and the deceased Venkatesan were staying in a rented house. On 13.7.1992, after the work was over, P.W.1 and the deceased Venkatesan came in a motorbike. After dropping P.W.1 at Athipattu Railway Station, the deceased Venkatesan left for his house at 9.00 P.M. P.W.1 in order to spend the time gap went to a nearby hotel, where he met A-1 and A-2. On seeing them, P.W.1 enquired A-1 about the health of his father, since A-1 applied for leave earlier and went to his native place in Andhra Pradesh. A-1 replied that his father was serious; and that he came back to Athipattu to get some amount from the Manager in order to give treatment to his father. A-1 further asked him whether the Manager Venkatesan was available in his house, and P.W.1 replied that his Manager was available. As per his schedule, P.W.1 left for Tondiarpet by train. The next morning i.e. on 14.7.1992, P.W.1 came back to Athipattu through train. At the Railway Station, he saw the Supervisor, Driver and the Cleaner waiting for the Manager. So all of them went to Manager's house and found the Manager Venkatesan lying dead in his bed. P.W.1 and another went to P.W.7's residence at Kilpauk. But he was not available there. On coming back to the site, he was present, to whom, they informed the same. On 14.7.1992 P.W.1 went to Minjoor Police Station and gave Ex.P1 complaint to P.W.9 Sub Inspector of Police at 7.30 P.M., who registered a case under S.174 of Code of Criminal Procedure. P.W.10 Inspector of Police, on receipt of the copy of the F.I.R., took up the investigation, went to the place of occurrence at 8.00 P.M. and prepared the Observation Mahazar and Rough Sketch marked as Exs.P16 and P1 7 respectively. He conducted inquest in the presence of the witnesses and prepared Ex.P18 inquest report. He enquired the witnesses present and recorded their statements. At that time, the Investigation Officer recovered M.O.2 blood stained mat, M.O.3 blood stained bed sheet, M.O.4 blood stained bed sheet, M.O.5 blood stained bed sheet, M. O.6 towel and M.O.7 cigarette butts under Ex.P19 Mahazar. Through P. W.5 a constable, the body of Venkatesan was sent for autopsy along with a requisition under Ex.P13. On receipt of the said requisition, P.W.8 Dr.Tahera Begum conducted the autopsy on the body of Venkatesan by 2.00 P.M. on 15.7.1992. The following external injuries were found by the Doctor on the body of the deceased Venkatesan.

1. Bruising 8 x 6 cms on the left cheek and temple.
2. A prominent horizontal ligature mark on the front of neck 13 cms in length and 1 cm in width. It is situated 5 cms below the right mastoid, 8 cms below the left mastoid and 10 cms above the sternal notch. Behind the neck the ligature mark is faint.
3. Laceration 2 x 1 cm of the mucosa of the upper lip on the left side.
4. Bruising 3 x 0.5 cm on the mucosa of the lower lip.

The Doctor has given the postmortem certificate under Ex.P14 and with the opinion that the deceased would appear to have died of Asphyxia due to strangulation and compression of the neck. On the basis of the said report, the case was altered into one under Ss 302 and 380 of I.P.C. An express

report under Ex.P20 was despatched to the Court. On 26.7.1992 at 3.00 P.M., when the first accused was arrested by P. W.10 Inspector, he gave a confessional statement, which was recorded in the presence of the witnesses P.W.3 Singaravelu and Velusamy. The admitted portion of the confessional statement is marked as Ex.P3. Pursuant to the said confession, the first accused took the police party and produced M.O.1 towel in the presence of the said witnesses, and the same was recorded under Ex.P4 Mahazar. On the same date, A-2 and A-3 were arrested at Gummudipoondi Bus Stand. The joint confessional statement given by A-2 and A-3 was recorded by the Investigation Officer in the presence of the witnesses. The admitted portion of the said joint confession is Ex.P21. Following the said joint confession, A-2 produced M.O.8 wrist watch, and A3 produced M.O.9 gold ring. M.Os.8 and 9 were recovered by the Investigation Officer under Exs.P2 3 and P22 mahazars respectively. P.W.6, the wife of the deceased Venkatesan identified M.Os.8 and 9 and gave a statement stating that they belonged to her husband. With a remand report, the accused were produced before the concerned Judicial Magistrate. The recovered material objects were despatched to the Court. Since P.W.10 was transferred, the successor took up the further investigation and filed the final report against the accused under Ss 449, 380 and 302 read with 34 of the Indian Penal Code.

5. In order to prove the said charges, the prosecution has examined P.Ws.1 to 10 and marked Exs.P1 to P23. The prosecution has also produced M.Os.1 to 9. When the accused were questioned under S.313 of Code of Criminal Procedure, they denied the versions of the prosecution witnesses stating that they are false. No defence witnesses were examined. The trial Court after hearing both sides, found the accused guilty and sentenced them as stated above. Hence, this appeal.

6. Arguing for the appellants, the learned Counsel would submit that there was no tangible material adduced by the prosecution to establish the guilt of the accused; that the trial court has considered the evidence of P.W.1 Karthikeyan, Supervisor stating that he met A-1 and A-2 at 9 P.M. in a Hotel, when they asked about the availability of the deceased and held that this was a strong circumstance leading to the inference that the accused should have committed the offence, but the same was a later introduction in evidence, since it has not been stated in the F.I.R.; that though P.W.1 has seen the dead body at 9 A.M. on 14.7.1992, he has given the complaint only at 7.30 P.M.; that the delay so caused in giving the F.I.R. has affected the prosecution case to a greater extent; that according to the prosecution, A-1 was arrested on 26.7.1992 and M.O.1 towel was recovered from him, but P.W.3 who was examined in that regard, has deposed that M.O.1 towel was recovered from A-3, and hence, the lower court should have rejected that piece of evidence; that P.W.7 Contractor, has stated in the cross examination that he saw all the three accused together on one day in the police station, which would belie the version of the prosecution that A-1 was arrested on 26.7.1992 and A-2 and A-3 were arrested on 30.7.1992 and the recoveries were made on different dates; that at the initial stage of the investigation, the offender was neither known nor fixed; that even in Ex.P18 inquest report, which was forwarded to the Court on 15.7.1992, it has been stated that the offence was committed by unknown culprits, and hence, the evidence of P.W.1 regarding his meeting with A-1 on 13.7.1992 at 9 P.M. cannot, but be false; that P.W.10 Investigation Officer deposed that M.O.8 wrist watch and M.O.9 gold ring were

identified by P.W.6 wife of the deceased as that of the deceased; that it is pertinent to note that P.W.1 Karthikeyan, who was all along staying with the deceased has not referred to anything about these material objects in his F.I.R., and hence, this would cast a doubt whether these material objects were worn by the deceased Venkatesan at all; that there is no evidence available that M.Os.8 and 9 were recovered from A-2 and A-3 respectively; that P.W.8, the Doctor, has not spoken anything about the probable time of death of the deceased; that it is pertinent to note that the body of the deceased was in a decomposed stage, and hence, the prosecution should have proved the time of death, and in the absence of the same, the prosecution case should have been rejected; that A-3 was not referred to by any of the witnesses; that he was not identified by any witness either in the Court or in the parade, and thus, the entire evidence would clearly reveal that it was newly introduced to suit the prosecution case; that there was no consistent version among the prosecution witnesses regarding the arrest and recovery, and thus, the entire prosecution case was filled with infirmities, and the prosecution has not proved its case beyond reasonable doubt; that without considering all these aspects of the matter, the lower court has found the accused guilty, and hence, the judgment of conviction and sentence has got to be set aside.

7. Countering to the above contentions of the appellants' side, the learned Additional Public Prosecutor would submit that the lower court has correctly found the accused guilty, in view of the sufficient evidence available; that from the evidence of P.W.1, it would be clear that he had met A-1 and A-2 just a few hours before the time of occurrence, and at that time, they have enquired about the Manager Venkatesan and that too for making some demand for money; that it remains to be stated that the occurrence of murder has taken place that night; that the prosecution has placed M.O.1 towel, which was recovered from A-1 on his confession recorded by P.W.10 Investigation Officer in the presence of two witnesses, out of whom one Singaravelu was examined in Court as P.W.3; that on the arrest of A-2 and A-3, they have also given joint confessional statement, which led to the recovery of M.Os.8 and 9; that the prosecution has examined P.W.6, the wife of the deceased Venkatesan, who has categorically identified M.Os.8 and 9 and stated that they belonged to her husband; that the postmortem Doctor has opined that the death was due to Asphyxia caused by strangulation and due to compression of neck, and the same would have been caused by M.O.1 towel; that this part of the Doctor's evidence is not disputed by the defence; that thus, though the prosecution case is rested upon the circumstantial evidence, by producing cogent and acceptable evidence, it has proved the case, and thus, the conviction passed and sentence imposed by the lower court have got to be sustained.

8. The charges that were levelled against the accused were under S.4 49 of IPC for committing house trespass in order to commit an offence punishable with death, S.302 read with 34 of IPC for committing the murder of the deceased Venkatesan and S.380 of IPC for stealing the wrist watch, gold ring and Rs.800/- from the house of the deceased. Though the prosecution has marched 10 witnesses, no one was examined as eyewitness, and thus, it is a case where the prosecution has rested solely on the circumstantial evidence.

9. The first and foremost circumstance, according to the prosecution, is that P.W.1 Karthikeyan, a co-employee of the deceased Venkatesan met A-1 and A-2 at 9.00 P.M. on 13.7.1992 in a Hotel at Athipattu, and they enquired P.W.1 as to the availability of the deceased at his house. According to

P.W.1, he along with others saw the dead body of the deceased Venkatesan at his residence at 9.00 A.M. on 14.7.1992, and he has given Ex.P1 complaint at Minjoor Police Station at 7.30 P.M. that day. Had it been true that P.W.1 had actually met A-1 and A-2 on 13.7.1992, as spoken to by P.W.1 in his evidence, this fact should have been mentioned in Ex.P1 complaint lodged by him. But, nowhere in the complaint, he has stated so. The non-mentioning of the same in the F.I.R. would cast a doubt whether P.W.1 would have met A-1 and A-2 prior to the occurrence, as put forth by the prosecution.

10. Much reliance has been placed by the prosecution on the arrest of A-1 on 26.7.1992 and recovery of M.O.1 towel, pursuant to his confessional statement, recorded by the Investigation Officer in the presence of P.W.3 Singaravelu and the other witness. The only witness examined by the prosecution to prove the confessional statement and the recovery of M.O.1 towel was P.W.3. It is pertinent to note that P.W.3 has identified A-3 in the Court, as the person who was arrested and who gave confessional statement leading to the recovery of M.O.1 towel, with which, according to the prosecution, the accused have committed the murder of the deceased Venkatesan. It was not the case of the prosecution that M.O.1 was recovered from A-3, nor was he arrested on 26.7.1992. According to P.W.10 Investigation Officer, A-3 was arrested only on 30.7.1992. All the above would be indicative of the fact that the Investigation Officer has neither arrested A-1 nor recovered M.O.1 towel on 26.7.1992 as alleged by the prosecution.

11. In order to connect A-2 and A-3 to the offences in question, the prosecution has relied on the joint confessional statement given by A-2 and A-3 in the presence of two witnesses, which led to the recovery of M.O.8 wrist watch from A-2 and M.O.9 gold ring from A-3. P.W.1 0 Investigation Officer has deposed that after the joint confession was made by A-2 and A-3 on 30.7.1992, M.O.8 wrist watch was recovered from A-2, and M.O.9 gold ring was recovered from A-3 under Exs.P23 and 22 Mahazars respectively. The prosecution has not examined any one of the attesting witnesses, before whom the alleged joint confession was recorded or before whom the alleged recovery of M.Os.8 and 9 was made. The prosecution has not tendered any explanation for the non-examination of any one of those witnesses. It is contended by the learned Additional Public Prosecutor that though the independent witnesses have not been examined, the Investigation Officer has categorically spoken to those facts, and there is no reason to disbelieve his evidence. This contention cannot be countenanced for the simple reason that P.W.3 has identified A-3 as the person from whom M.O.1 was recovered on 26.7.1992. Apart from the above, P.W.7 has admitted in his cross examination that he met all the three accused together within 1 0 days from the date of occurrence. This part of the evidence would also belie the arrest of A-1 and the recovery of M.O.1 from him on 26 .7.1992 and so also the arrest of A-2 and A-3 on 30.7.1992 and the recoveries of M.O.8 from A-2 and M.O.9 from A-3. The court is able to see force in the contention put forth by the appellants' side that P.W.1 who has been staying all along with the deceased Venkatesan, has not whispered anything about the wrist watch and gold ring from the body of the deceased Venkatesan. It remains to be stated that he has given the complaint ten hours after seeing the dead body. The natural course of the human conduct would be to speak about the missing articles from the dead body. But, P.W.1 has not stated so in the complaint.

12. On a requisition made by P.W.10 Investigation Officer, P.W.8

Dr.Tahera Begum conducted autopsy on the body of the deceased Venkatesan and has given Ex.P14 postmortem report. It is true that the postmortem Doctor has given a final report stating that the deceased would appear to have died of Asphyxia due to strangulation and compression of the neck. From Ex.P14 postmortem report, it could be well seen that at the time of the commencement of the autopsy, the rigour mortis was absent all over the body, and the same was found in a decomposed stage. But, the Doctor has not given any opinion as to the probable time of death. The prosecution has not placed any evidence as to the time of death of the deceased Venkatesan. Normally in a case of murder, the prosecution has to place necessary proof as to the probable time of death of the deceased, and the same assumes importance in a case where the prosecution solely rests upon the circumstantial evidence. In the instant case, the prosecution has failed to adduce the required evidence in that regard.

13. It was not the case of the prosecution that the third accused was already known to P.W.7 Contractor or P.W.1 Supervisor or to any one of his co-employees. But, the prosecution has not taken steps to conduct any identification parade in this regard. The only piece of evidence available was that of the Investigation Officer speaking about the confessional statement given by A-3 along with A-2 and the recovery of M.O.9 gold ring from him. The court is of the view that the evidence of P.W.10 in that regard cannot be accepted for the reasons stated supra.

14. According to the charges, the instant had taken place in the midnight of 13.7.1992, and the dead body was first witnessed by P.W.1 and others by 9 A.M. on 14.7.1992. But, the complaint under Ex.P1 was given by P.W.1 only at 7.30 P.M. Thus, considerable delay is caused in lodging the complaint. But, this delay remains unexplained by the prosecution. All the above, no doubt, would lead to the irresistible conclusion that the prosecution has not at all proved the nexus between the accused/appellants and the crime in question. In a case where the prosecution is rested on the circumstantial evidence, the law would expect that chain of circumstances should be complete in such a way that except the accused, no one could have committed the crime. In the instant case, the prosecution has not proved even a single circumstance pointing to the guilt of the accused. Under such circumstances, this Court has to necessarily find that the prosecution has not proved any one of the charges levelled against the accusedappellants 1 to 3 beyond reasonable doubt, and hence, they are entitled for acquittal of the charges.

15. In the result, this appeal is allowed, setting aside the judgment of conviction and sentence passed by the lower court. The accused/appellants 1 to 3 are acquitted of all the charges levelled against them. The bail bonds executed by the appellants, if any, shall stand cancelled.

Index: Yes (P.S.M.J.) (M.C.J.)
Internet: Yes 19-8-2002
To:
1. The District & Sessions Judge,
Chengalpattu.
2. The District Collector,
Chengalpattu.

3. The Director General of Police,
Chennai.
4. The Judicial Magistrate No.I,
Ponneri.
5. The Judicial Magistrate No.I, Ponneri,
Through The Chief Judicial Magistrate,
Chengalpattu.
6. The Inspector of Police,
Minjoor Police Station,
Chengai M.G.R. District (Cr.No.1119/92).
7. The Superintendent of Central Prison,
Madras.
8. The Public Prosecutor,
High Court, Madras.
9. The Inspector of Police,
D-1 Triplicane Police Station.
nsv/
P.SHANMUGAM, J.
AND
M.CHOCKALINGAM, J.

Judgment in
C.A.No.13 of 1995